INDEX

	Page
Opinions below	1
Jurisdiction	2
Questions presented	2
Statutes involved	3
Statement	5
Argument	13
Conclusion	20

CITATIONS

Cases:

Daeche v. *United States*, 250 Fed. 566	19
Gendelman v. *United States*, 191 F. 2d 993, certiorari denied, 342 U.S. 909	18
Gleckman v. *United States*, 80 F. 2d 394, certiorari denied, 297 U. S. 709	18
Hirabayashi v. *United States*, 320 U. S. 81	13
Leeby v. *United States*, 192 F. 2d 331	15, 18
Pinkerton v. *United States*, 328 U. S. 640	13
Tinkoff v. *United States*, 86 F. 2d 868, certiorari denied, 301 U.S. 689	18
United States v. *DiOrio*, 150 F. 2d 938, certiorari denied, 326 U. S. 771	19
United States v. *Schenck*, 126 F. 2d 702, certiorari denied *sub nom. Moskowitz* v. *United States*, 316 U. S. 705	18
Warszower v. *United States*, 312 U. S. 342	20

Statutes:

Internal Revenue Code:	
Sec. 145 (26 U.S.C. 1946 ed., Sec. 145)	3, 5
Sec. 3809 (26 U.S.C. 1946 ed., Supp. V, Sec. 3809)	3, 5
18 U.S.C., Sec. 371	4, 5

Miscellaneous:

VII Wigmore, Evidence (3rd ed., 1940), Secs. 2070-2071	20

In the Supreme Court of the United States

OCTOBER TERM, 1953

No. 164

HY GOLDBAUM, GEORGE CAPRI, AND EDWARD COOKE, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

Neither the District Judge's oral opinion announcing his decision (R. 1136-1143)[1] nor his writ-

[1] The record consists of nine numbered volumes. Volumes II through VI contain the transcript of the trial proceedings and the proceedings in the Court of Appeals. The pagination runs from 1 to 1160. References to these volumes will be designated "R." Volume I contains the formal District Court record. Volumes VII, VIII and IX are the briefs and appendices filed in the Court of Appeals. References to Volumes I, VII, VIII and IX, each of which is paginated separately, will

ten findings of fact (Vol. I, pp. 23-32) have been reported. The opinion of the Court of Appeals (R. 1149-1157) is reported at 204 F. 2d 74.

JURISDICTION

The judgment of the Court of Appeals was entered on April 13, 1953 (R. 1158), and the petition for rehearing was denied May 14, 1953 (R. 1159). On May 30, 1953, by order of Mr. Justice Douglas, the time for filing the petition for a writ of certiorari was extended to July 13, 1953. The petition was filed July 6, 1953. The jurisdiction of this Court is invoked under 28 U.S.C., Section 1254 (1). See also Rules 37(b)(2) and 45(a), Federal Rules of Criminal Procedure.

QUESTIONS PRESENTED

1. Whether the Government, in determining the taxable income of taxpayers (whose primary records have been destroyed) by computing the annual increases in their net worth, was required to include accounts receivable and accounts payable in the net worth computation, where the taxpayers had kept their books and filed their returns, not on an accrual basis, but on a cash basis.

2. Whether there was a material variance between the allegations of Count Thirteen, which charged petitioners with submitting a false part-

---

be designated by volume and by page, *e.g.*, "Vol. I, p. 23" or "Vol. VII, App. p. 1".

The original exhibits have not been included in the present record. Reproductions of a number of the most important will, however, be found in the appendices to Volume VII and Volume VIII.

nership return for the year 1949, and the evidence adduced by the Government, which disclosed over $29,000 in partnership income in addition to that reported in the return.

3. Whether the *corpus delicti* of the offense charged in Count Thirteen was sufficiently established, independently of the admissions of petitioner Cooke.

STATUTES INVOLVED

Internal Revenue Code:

SEC. 145. PENALTIES.

* * * * *

(b) *Failure to Collect and Pay Over Tax, or Attempt to Defeat or Evade Tax.*—Any person required under this chapter to collect, account for, and pay over any tax imposed by this chapter, who willfully fails to collect or truthfully account for and pay over such tax, and any person who willfully attempts in any manner to evade or defeat any tax imposed by this chapter or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, be fined more than $10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

* * * * *

(26 U.S.C. 1946 ed., Sec. 145.)

SEC. 3809. VERIFICATION OF RETURNS; PENALTIES OF PERJURY. [as added by Sec. 4, Act of August 27, 1949, c. 517, 63 Stat. 666].

(a) *Penalties.*—Any person who willfully makes and subscribes any return, statement, or other document, which contains or is verified by a written declaration that it is made under the penalties of perjury, and which he does not believe to be true and correct as to every material matter, shall be guilty of a felony, and, upon conviction thereof, shall be fined not more than $2,000 or imprisoned not more than five years, or both.

(b) *Signature Presumed Correct.*—The fact that an individual's name is signed to a return, statement, or other document filed shall be prima facie evidence for all purposes that the return, statement, or other document was actually signed by him.

(c) *Verification in Lieu of Oath.*—The Commissioner, under regulations prescribed by him with the approval of the Secretary, may require that any return, statement, or other document required to be filed under any provision of the internal revenue laws shall contain or be verified by a written declaration that it is made under the penalties of perjury, and such declaration shall be in lieu of any oath otherwise required.

(26 U.S.C. 1946 ed., Supp. V, Sec. 3809.)

18 U.S.C.:

SEC. 371. CONSPIRACY TO COMMIT OFFENSE OR TO DEFRAUD UNITED STATES

If two or more person conspire either to commit any offense against the United States, or

to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined not more than $10,000 or imprisoned not more than five years, or both.

* * * * *

STATEMENT

On December 12, 1951, an indictment in thirteen counts (Vol. I, pp. 2-17) was filed against petitioners in the United States District Court for the Southern District of California. Three separate types of offense were charged: (1) wilful attempted evasion of income taxes, in violation of Section 145(b) of the Internal Revenue Code; (2) making and subscribing false partnership returns, in violation of Section 3809 of the Internal Revenue Code;[2] and (3) conspiracy to commit the above two types of substantive offense, in violation of 18 U.S.C., Section 371. Count One charged all three petitioners with conspiracy to evade their income taxes for the years 1945, 1946 and 1947 by filing false individual returns, and with conspiracy to file false partnership returns for the years 1947, 1948 and 1949. In furtherance of the conspiracy, petitioners were alleged to have concealed the identity of the persons with whom they did business, the amounts they received, and the amounts they paid out; and they were alleged to have destroyed records of their

[2] The two counts on which petitioners were acquitted were brought under Section 145(c) of the Internal Revenue Code, since repealed.

transactions and to have maintained other records that were false. The overt acts alleged were the filing of the various returns. Counts Two, Four and Six charged all three with wilful attempted evasion of the income taxes of petitioner Goldbaum for the years 1945, 1946 and 1947. Counts Three, Five and Seven charged all three with a similar offense as to petitioner Capri. Counts Eight, Nine and Ten charged all three with a similar offense as to petitioner Cooke. Counts Eleven, Twelve and Thirteen charged all three with filing false partnership returns for the years 1947, 1948 and 1949, respectively. After a trial by the court, petitioners were found guilty on all counts, except Counts Eleven and Twelve (Vol. I, p. 20), and the court made special findings of fact (Vol. I pp. 23-32). Petitioners were sentenced to imprisonment for three years on each count, all terms to run concurrently. (Vol. I, pp. 35-38.)

The evidence to support the finding of guilt may very briefly be summarized as follows:

In May or June 1945, the three petitioners formed an equal partnership in Los Angeles under the name "Golden News Service" to operate as horse racing commissioners. (R. 623-625, 651-652.) They acted as brokers, accepting wagers from various "bettors" which they then "laid off" to various "takers". After the race, they received the money from the loser and forwarded it to the winner. If the "bettor" won they received no commission; but if the "taker" won they deducted a commission of 2½% to 5%. (R. 136, 513, 935.) The business

of the partnership was nation-wide and even international, the annual phone bill running as high as $77,000. (R. 592-593.)

The operation was illegal in California, and on January 29, 1949, the partnership removed to Las Vegas, Nevada. In order to obtain a license in Nevada, it was necessary for one of the partners to represent himself as sole owner, and the license was therefore obtained by petitioner Cooke under the name "Flamingo Commissioners". Three letters of Cooke, however, make it clear that Flamingo Commissioners was a partnership venture and that the partnership continued to use the name, Golden News Service, for some purposes in Las Vegas.[3]

---

[3] These letters were introduced as Government's Exhibit 38. (R. 659, 738-740; Vol. VIII, App. pp. 1-2.) One of them reads as follows:

May 1, 1949.

Mr. Harry Sackman,
Tax Consultant,
201-222 Taft Bldg.,
Hollywood 28, Calif.

Dear Harry:

Kindly refer to my letter dated January 15, 1949, wherein I advised you that the GOLDEN NEWS SERVICE had moved its activities to Las Vegas, Nevada.

I wish to further advise you that in order to obtain a license in Las Vegas, Nevada, it was necessary for the writer to represent himself to be the sole owner of the said business, and, the said business was to be operated as the Flamingo Commissioners. As stated before, this was simply a routine matter requested by the License Commissioner of Las Vegas, Nevada, to comply with the issuance of licenses.

However, for income tax purposes, the joint venture of the GOLDEN NEWS SERVICE remains intact, *i.e.*, the GOLDEN NEWS SERVICE becomes a joint venturist with the writer and in turn the joint venturists of the GOLDEN NEWS SERVICE remain as heretofore.

Kindest regards.

Sincerely yours,

(S.) EDWARD COOKE.

D THROUGH POOR COPY

The partnership filed its income tax return for 1949 as the Golden News Service. (R. 660.) The figures used in the return were taken from the records of Flamingo Commissioners. (R. 512, 641-648.)

In addition to income from commissions on bets accepted from "bettors" and "laid off" to "takers", there was evidence that the partnership also had income from bets which it took itself instead of laying them off. Price, auditor of the Nevada State Tax Commission, examined the books of Flamingo Commissioners for the period between April 9 and April 26, 1949. He discovered that a number of bets were being laid off to a syndicate of "takers," one member of which had a 40% interest and was represented by the symbol "GN". (R. 144-153.) Cooke told Price that "GN" stood for petitioners Goldbaum and Capri, but that he himself had no part in the syndicate. (R. 126-127, 144-145.) However, it was in the interest of the partnership for Cooke, in whose name the license for Flamingo Commissioners had been obtained, to divorce himself from Goldbaum and Capri in the eyes of the Nevada authorities. (R. 126-127, 160-163, 188, 655-657.) Flamingo Commissioners charged no commission on bets which it laid off to the syndicate. (R. 655-657.) For the period between April 9 and April 26, 1949, the books of Flamingo Commissioners, as examined by Price, revealed that the syndicate had net winnings of $64,638.25. The share of "GN" was $29,060.75. (R. 144-153.)

The records of the partnership were kept in the

following manner: each individual bet was recorded on a small slip as soon as it was received; the information on the slips was transferred to a daily master sheet, which contained all "bettors" in its upper half and all "takers" in the lower half with space for balances and the amount of commissions; the daily balances and commissions were entered in cryptic fashion in a permanent bound ledger. (R. 131-144.) All the daily records were promptly and systematically destroyed. (R. 133-134, 184-185, 512, 521-524, 599.) When Price, the Nevada official, asked for the records during his investigation in late April 1949 he was given the bound ledger for 1949. Finding this inadequate because it failed to reveal the identity of "bettors" and "takers", he insisted on being shown the daily records. Cooke then produced the daily sheets for the period from April 9 to April 26, saying that all prior records had been destroyed. (R. 131-144.) As a result of Price's investigation, Cooke was ordered by the state authorities to keep proper records and to preserve the daily slips and sheets. (R. 162-170, 655-657.) Price made later checks in 1949 and found that the order was being obeyed. (R. 162-163.) However, when in June 1950 the internal revenue agents began the investigation which led to the present prosecution, they were told that all these records, with the single exception of the ledger book for 1949, had been destroyed. (R. 512, 521-524.)

The figures used in the 1949 partnership return were found to be almost identical with the totals

in the 1949 ledger.[4] (R. 641-651.) Neither the ledger nor the return reflected the $29,060.75 derived from the net winnings of the syndicate for the period from April 9 to April 26. (R. 153, 661-669.) And although there was evidence to show that the partnership had engaged in its regular commission business in Los Angeles prior to its removal to Las Vegas on January 29, neither the ledger nor the return reflected income of any type for that period.[5] (R. 375-376, 421-430, 691-698.)

There was evidence to show that the partnership operated on a cash, rather than on accrual, basis. The partnership returns specifically stated that they had been prepared on a cash basis. (R. 646-647.) When the revenue agents interviewed petitioner Goldbaum and the accountant, Sackman, the latter told them that a cash basis was used in both the records and the returns because, being gamblers, petitioners were concerned about "bad debts" arising from uncollectible wins which would have had to be reported when earned if they kept their books on an accrual basis. Goldbaum agreed that this was so. (R. 512-513, 626, 824-830.)

The Government demonstrated by computations showing annual increases in net worth that each of the individual partners had failed to report substantial amounts of individual income for the

---

[4] Sackman, the accountant who prepared the returns for the individual petitioners and for the partnership, received the figures over the phone from petitioners and did not use any of their records. (R. 599.)

[5] Because of the nature of the business, the partnership never had a losing day in respect of its commission operations. This appears clearly from the pages of the 1949 ledger.

years 1945, 1946 and 1947. One-third of the partnership net worth, computed on a cash basis, was attributed to each of the partners. The income totals are as follows (Vol. VIII, Appendices B, C, D and E):

		Reported	*Unreported*
Goldbaum	1945	$18,663.67	$30,069.95
	1946	15,871.68	6,386.73
	1947	8,424.33	3,020.59
Capri	1945	$ 5,527.67	$ 7,892.71
	1946	15,871.68	12,162.30
	1947	8,424.34	17,703.14
Cooke	1945	$ 9,902.67	$ 4,728.44
	1946	14,520.66	6,567.28
	1947	13,624.33	5,707.11

Petitioners did not testify themselves. The evidence adduced in their behalf was largely an effort to show that an accrual system of accounting was followed in the books and returns of the partnership, and that the government's calculations were consequently erroneous. Webster, the expert accountant who testified for the defense, admitted in substance that there was not enough evidence in the record upon which he could base a firm opinion that the partnership used an accrual system. (R. 1032-1037.)

The District Court's special findings of fact may briefly be summarized as follows (Vol. I, pp. 23-32, Vol. VIII, App. pp. 13-24):

1. *Conspiracy count.*—Petitioners conspired to file false individual income tax returns for 1945, 1946 and 1947, and a false partnership return for

1949. In furtherance of the conspiracy they concealed the identity of the persons with whom they dealt and the amounts of money they received and paid out. They used a code system in their records and destroyed most of them.

2. *Tax evasion counts.*—Petitioners knowingly assisted each other in filing individual income tax returns for the years 1945, 1946 and 1947 in which the amount of taxable income was substantially understated. Information as to certain income derived from commission business and gambling transactions was withheld from the accountant who prepared the returns. Both petitioners and the partnership reported income on a cash basis, but their books did not disclose true income and the Government's net worth computation clearly establishes substantial amounts of taxable income in addition to the amounts reported. With respect to each year the court found specific instances in which substantial amounts of partnership earnings had not been reported.

3. *False partnership return counts.*—Petitioners were found not guilty under Counts Eleven and Twelve. As to Count Thirteen, petitioners filed a partnership return for the year 1949 in which they reported gross receipts of $136,338.50, but knowingly omitted additional receipts of $29,060.75 derived from wagering. They also omitted all income received between January 1 and January 28, the amount of which could not be determined because the books had been concealed or destroyed by petitioners.

The Court of Appeals found no error as to the finding of guilt under Count Thirteen, and affirmed the convictions without discussion of the other counts since all terms of imprisonment had been made to run concurrently.

ARGUMENT

It is submitted that none of the three grounds upon which the petition for certiorari is based has merit. Moreover, in view of the concurrent sentences, the petition should be denied if the finding of guilt as to any one of the counts is free from error. *Hirabayashi* v. *United States*, 320 U. S. 81, 85, 105; cf. *Pinkerton* v. *United States*, 328 U. S. 640, 641-642.

1. Petitioners contend (Pet. 8-10) that the District Court disregarded the presumption of innocence, so far as the conspiracy and tax evasion counts were concerned. They point out that the finding of guilt as to these counts (One through Ten) rests upon the Government's net worth computation, and that this computation fails to take accounts receivable and accounts payable into consideration. They argue that the admission of such a computation had the effect of shifting the burden of proof to them by requiring them to explain the discrepancies between their reported income and the results of the Government's computation.

But both petitioners and the partnership were, as the District Court found, on a *cash* basis; and accounts receivable and payable have nothing to do with the net worth computation of a cash basis

taxpayer's income. An individual or entity reporting income on a cash basis in general reports income only as it is *actually received* and deducts expenses only as they are *actually paid;* on the accrual basis, income is reported when it is *earned,* whether or not actually received, and expenses are deducted as they are *incurred,* whether or not actually paid. Therefore, if the net worth computation of a cash basis taxpayer's income considers his accounts receivable and payable, in effect the computation is converting him into an accrual basis taxpayer against his choice. This is because the accounts receivable and accounts payable respectively reflect income earned but not yet received, and expenses incurred but not yet paid, whereas, by the definition above stated, a cash basis taxpayer is not required to report or allowed to deduct such items.[6] (See Vol. VIII, App. pp. 7-11.)

That accounts receivable and payable should be

[6] Loans receivable and payable, as distinguished from accounts receivable and payable, stand on a different footing and should be taken into account in the computation, regardless of the accounting basis employed. This is because the making or receiving of a loan is *not* a transaction affecting income or expenses, but is merely a conversion of one asset into a different form or the creation of a new asset and a corresponding offsetting liability. Hence, in this regard, the basis of accounting used in reporting income and expenses has no materiality. That is to say, when a loan is made or received, the net worth (assets minus liabilities) of the lender or borrower remains exactly as it was before the loan, regardless of the accounting basis used. On the other hand, the net worth of a person who acquires an account receivable or payable changes (i.e., the assets increase without any offsetting liability, or the liabilities increase without any offsetting asset) as these items arise, and whether this change in net worth reflects income or not depends on the accounting basis employed.

ignored in a net worth computation for a cash basis taxpayer was recognized recently by the Court of Appeals for the Eighth Circuit in *Leeby* v. *United States*, 192 F. 2d 331. There, as in the present case, the taxpayer objected to a net worth computation from which his accounts receivable and payable had been omitted. In affirming the correctness of the Government's exhibit, the court said at page 334:

> Defendant insisted that the government's exhibits were inaccurate because they did not take into account either bills payable or bills receivable. They were prepared, however, on the cash basis and there is nothing to indicate that defendant had adopted the accrual basis of accounting * * *.

Furthermore, accounts receivable and payable were asserted only as to the partnership, not as to the individual partners. But an elimination of the value of the partnership interest from the computations of the individual partners' net worth would still result in a showing that petitioners had underreported incomes in certain years. A computation included in the record (Vol. VIII, App. p. 12) discloses the following unreported income, exclusive of any interest in the partnership:

	1945	*1946*	*1947*
Goldbaum	$23,141.20	—	$ 8,338.51
Capri	963.96	$3,722.72	23,021.05
Cooke	—	—	11,025.02

Accordingly, even if petitioners were correct, no

ground would be presented for reversal in the present case.

2. Petitioners contend (Pet. 10-12) that there was a prejudicial variance between the offense as alleged in Count Thirteen and in the bill of particulars, and the offense actually established by the Government's evidence. Count Thirteen charged that the 1949 partnership return was false in that it disclosed gross receipts of $136,338.50, whereas petitioners knew that the partnership had actual gross receipts of $3,685,469.75. (Vol. I, p. 17.) The bill of particulars simply alleged that the actual gross receipts figure in the indictment had been derived from the books and records of the partnership. (R. 671-672; Vol. VII, App. p. 56.) The Government proved from the 1949 ledger (Ex. 31) that the partnership received commissions amounting to $136,338.50, as reported in the return (R. 641-646). The Government also adduced proof through Price, who had examined the original records for the period from April 9 to April 26, that the partnership had received additional income of at least $29,060.75 in the form of winning bets. Petitioners now contend that the theory of the indictment and bill of particulars was simply that they were required to report as gross receipts all money which they received from "bettors" and forwarded to "takers", or vice versa, in connection with their operations as betting commissioners. They claim to have been surprised by the introduction of evidence to show that they also had income from bets which they "took" themselves instead of "laying them off" to others. The argument is without support in the record.

It is true that the Government urged upon the trial court, without success, the theory that all money passing through the hands of the partners, as commissioners, should have been included in the gross receipts of the partnership. (R. 48-50, 64, 1109.) But the Government was not restricted to this theory by the indictment and the bill of particulars, for all that is said there is that the actual gross receipts alleged had been derived from the books and records of the partnership. And, as has been seen, the Government proved from the books and records that there were substantial receipts which had not been reported in the partnership return. Furthermore, the prosecutor made it perfectly clear in his opening statement that the Government intended to show that the partnership had derived income directly from gambling in addition to the commissions it collected on the bets of others. The prosecutor said (R. 8; cf. 39-41):

> In 1949 they moved to Las Vegas to the Flamingo Hotel there. That is when they operated as Flamingo Commissioners. Now, so far, I have said that their main source of income, the government contends, was from the commission business; but the government will also prove, in addition to the commission business, they engaged in gambling activities of the usual bookmaking sorts, only in large amounts, and the government will prove that they had a source of income from this type of transaction.

There was no objection to this statement by the prosecutor, nor was there a request for a continuance. On the first and second days of the trial,

the Government presented the testimony of Price, to which petitioners now point in claiming a variance. Petitioners not only failed to object on the ground of variance (R. 157), but specifically agreed to the admission of Price's working papers (R. 167), and clearly revealed by their cross-examination that they understood the purpose of the evidence (R. 122-197). Not until six days later did it occur to them to claim a variance. (R. 669-671.)

The discrepancy between the amount of unreported income alleged in the indictment and in the bill of particulars and the amount actually proved by the Government is immaterial. All that is necessary is that unreported income of a substantial amount be established. *Leeby* v. *United States, supra; Gendelman* v. *United States,* 191 F. 2d 993, 996 (C.A. 9th), certiorari denied, 342 U. S. 909; *United States* v. *Schenck,* 126 F. 2d 702, 704 (C.A. 2d), certiorari denied *sub nom. Moskowitz* v. *United States,* 316 U. S. 705; *Tinkoff* v. *United States,* 86 F. 2d 868, 878 (C.A. 7th), certiorari denied, 301 U. S. 689; *Gleckman* v. *United States,* 80 F. 2d 394, 399-401 (C.A. 8th), certiorari denied, 297 U. S. 709. Here, the Government proved unreported income of at least $29,060.75 during the period from April 9 to April 26, the only period for which evidence of the original records was available.

3. Petitioners contend (Pet. 12-13) that the Government's proof of guilt under Count Thirteen rests upon the uncorroborated admissions of petitioner Cooke, and that there is no independent evidence of the *corpus delicti.* The admissions re-

ferred to are evidently Cooke's three letters, two to Sackman and one to Greenbaum (R. 659; Vol. VIII, App. pp. 1-2), in which he clearly stated that the partnership was still operating as the Golden News Service after the move to Nevada, and his statement to Price that "GN" represented the Golden News Service, although he coupled this last with a denial that he himself had anything to do with the syndicate in which "GN" was a participant (R. 126-127, 146-147, 187). So far as we have been able to determine, this objection was never raised in either of the courts below.

The argument is without merit. The independent proof necessary to corroborate an admission need not be such as to establish the *corpus delicti* in itself. "Any corroborating circumstances will serve which in the judge's opinion go to fortify the truth of the confession. Independently they need not establish the truth of the *corpus delicti* at all, neither beyond a reasonable doubt nor by a preponderance of proof." *Daeche* v. *United States*, 250 Fed. 566, 571 (C.A. 2d); see also *United States* v. *DiOrio*, 150 F. 2d 938 (C.A. 3d), certiorari denied, 326 U. S. 771. Here, the partnership continued to make its returns under the name of Golden News Service after the move to Nevada. The use of the symbol, "GN", in itself clearly points to the partnership. And the partnership failed to charge commissions on bets won by the syndicate. These circumstances provide sufficient corroboration for Cooke's statements.

Furthermore, Cooke's letters were written, and his statements to Price were made, during the first

half of 1949. The false partnership return was not filed, and the offense was not committed, *until* January 1950. (See Vol. VIII, App. p. 16.) "The rule requiring corroboration of confessions protects the administration of the criminal law against errors in convictions based upon untrue confessions alone. Where the inconsistent statement was made prior to the crime this danger does not exist. Therefore we are of the view that such admissions do not need to be corroborated." *Warszower* v. *United States*, 312 U. S. 342, 347. See also VII Wigmore, Evidence (3rd ed., 1940), Secs. 2070-2071.

CONCLUSION

The decision below is clearly correct, and no conflict of decisions or important question of law is involved. The petition for a writ of certiorari should be denied.

Respectfully submitted,

ROBERT L. STERN,
Acting Solicitor General,
H. BRIAN HOLLAND,
Assistant Attorney General,
ELLIS N. SLACK,
MEYER ROTHWACKS,
JOSEPH M. HOWARD,
Special Assistants
to the Attorney General.

AUGUST, 1953.

☆ U. S. GOVERNMENT PRINTING OFFICE 1953 203813 137